

### REMARKS

Claims 1-16 and 18-27 are pending, claims 17 has been canceled without prejudice, and claims 1, 15, 18 and 19 have been amended, as indicated above. Applicant notes for the record that the subject matter of claim 17 has been incorporated into independent claim 15; therefore, cancellation of claim 17 should not be construed as intent to surrender any subject matter. Claims 18 and 19 have been amended to depend from claim 15, due to claim 17 having been canceled.

#### Priority Analysis

Applicants do not necessarily agree with the Office Action's priority analysis, but since the claimed invention can be distinguished over the cited art, Applicants have elected to proceed by submitting arguments with respect to the cited art. Applicants reserve the right to revisit the issue of priority should Applicants desire or need to do so in the future.

#### Rejection of Claim 14 Under 35 U.S.C. § 112, First Paragraph

The Office Action rejected claim 14 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, with respect to claim 14, the Office Action asserts that the application is silent or deficient on: (i) how name-value pairs are implemented in the IMCP protocol, (ii) how real-time (i.e., data information) is sent, other than disclosing that labels are used, and (iii) how a packet is labeled for silence/background noises.

The Office Action correctly notes that whenever a written description issue arises, "the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as

now claimed." MPEP 2136.02. However, it is also important to recognize that "the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement." *Id.*

Applicant respectfully submits that name-value pairs, sending real-time data, and packet labeling are principles that were well-known to those of ordinary skill in the art at the time the application was filed. Furthermore, the claimed invention is independent of any particular implementation of these well-known principles. Applicant's references to particular name-value pair implementations, such as within HTTP, are intended to provide examples, that assure appropriate context to one of ordinary skill in the art, for Applicant's use of these terms. Accordingly, the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicant was in possession of the invention as now claimed. Because Applicant's invention is independent of any particular implementation, it also is entirely appropriate that protocols and other aspects of certain exemplary embodiments for Applicant's claimed invention are similar to known standards in some respects, but different in other respects. Accordingly, Applicant respectfully submits that the rejection of claim 14 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement has been overcome and should be withdrawn.

Rejection of Claims 1-14 Under 35 U.S.C. § 112, Second Paragraph

The Office Action rejected claims 1-14 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particular point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office Action objected to use of the term

"service request" in claim 1 at lines 7 and 9 because the term does not appear in Applicant's Specification.

As noted in Section 2173.02 of the MPEP,

The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph by providing clear warning to others as to what constitutes infringement of the patent.

Applicant notes that the term "service request" was commonly used in both telephony protocols and in client/server models for distributed computing at the time the invention was made.<sup>1</sup> Accordingly, Applicant respectfully submits that use of the term "service request" apprises one of ordinary skill in the art of the claims' scope, and therefore the rejection of claims 1-14 under 35 U.S.C. § 112, second paragraph, as being indefinite, is improper and should be withdrawn.

#### Rejection of Independent Claims 1 and 15 Under 35 U.S.C. § 103(a)

The Office Action rejected independent claims 1 and 15 under 35 U.S.C. § 103(a) as being unpatentable over "Supplementary Service in the H.323 IP Telephony Network" by Korpi

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<sup>1</sup>The Office Action correctly notes that "LockLine" is an example of a telephony protocol "service request."

et al. ("*Korpi*") in view of "H.323: The Multimedia Communications Standard for Local Area Networks" by Thom ("*Thom*").<sup>2</sup>

Applicant's invention, as recited in independent claim 1 for example, relates to a method for supplying communication and data services across a dispersed Internet protocol capable network by selectively connecting devices that are electrically attached to the network. The method includes initiating a control path connection on a network layer between individual components attached to the dispersed network and at least one central arbitration server for centralized arbitration of service requests received from the individual components, receiving a service request, initiating a data path connection between the individual components designated by the service request, and the central arbitration server initiating a service layer to supply the requested service.

Similarly, Applicant's invention, as recited for example in independent claim 15, as amended, relates to a communication and data services network predominately using a packetized transmission protocol. The communication and data network comprises means for requesting a communication data service; means for initiating a network layer between attached components of the dispersed network, wherein the network layer initiates a control path for the attached components and a data path for select components designated in the requested communication data service, the means for initiating a network layer comprising (i) at least one central arbitration server (CAS) for centralized arbitration of service requests received from the means for requesting a communication data service, and (ii) a plurality of entry gateways (CE), wherein each CE performs digital signal processing on received signals to generate encoded

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<sup>2</sup>Applicant's arguments with respect to the cited art should not be interpreted as acquiescing as to the prior art status or asserted teachings of the cited art. Accordingly, Applicants specifically reserve the right to challenge the prior art status and asserted teachings of the cited art, should Applicants desire to do so in future responses.

packets and is connected to the at least one CAS via the control path; and means for initiating a service layer to supply the requested communication data service.

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation . . . to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." MPEP § 2143.

In rejecting independent claim 1, the Office Action asserts that the Gatekeeper Y/Router in *Korpi* is an example of a central arbitration server and that *Thom*, in figure 4 on page 55, teaches initiating a service level layer to supply a requested service. Office Action, p. 8-9 (rejection of claim 1). The Office Action rejected claim 15 by simply referring to the rejection of claim 1. Office Action, p. 9 (rejection of claim 15). Applicants respectfully disagree with the Office Action's assertions.

The "control path connection" disclosed by *Korpi* in figure 1 is silent regarding the actual functionality of an H.323 gatekeeper, but *Korpi* provides further detail on page 122, top left, teaching that "in this peer-to-peer model, both the payload and signaling is sent transparently through the network without requiring processing by any network entity." *Korpi* teaches on page 119, left, that "H.450 defines signaling between endpoints for supplementary services." *Korpi* further explains that "[t]his signaling is routed through the gatekeeper when a gatekeeper is used in the H.323 network." *Thom* teaches on page 55, top left, that an H.323 gatekeeper merely "relays all call signaling between endpoints." Therefore, for both *Korpi* and *Thom*, an H.323 gatekeeper is not required in the network architecture, and when one exists, it is merely a relay with no network intelligence for initiating a service layer. In other words, H.323 is a peer-to-peer model and does not require any processing by a gatekeeper. An H.323 gatekeeper

neither performs centralized arbitration of service requests nor grants resources—it does not process service request signaling and does not possess sufficient network intelligence to initiate a service layer to supply a requested service.

As Applicant notes in the Specification, this distinction is significant because a centralized arbitration model, as compared to a peer-to-peer model, enables creation of enhanced services that H.323 could not support cost effectively. One example detailed in the Specification beginning on page 24, line 8, is billing of complex communication services. "In addition CAS allows for extensible CDR allowing the application to add any fields needed to completely describe a call . . . . CAS allows an application to 'group' CDR together with a 'key' to allow later bill creation to present a complex session like a conference call in a way the customer will understand." In contrast, an H.323 conference call service is carried out by endpoints of an H.323 network and the gatekeeper does not have full control of conferees. For example, *Korpi* teaches on page 121, bottom right, that "For conferencing, the signaling consists of client A transferring its calls with B and C to a conference server, and then making its own call to the conference server. In H.323 the address of the conference server is declared by each client as part of the capability exchange at call setup time." It is evident from this discussion by *Korpi* that the gatekeeper is not involved in "service layer" initiation and, thus, cannot provide billing information for the communication services. For an example embodiment of Applicant's invention corresponding to Figure 1, all service request signaling is addressed to CAS 40 for arbitration before service can be granted or a service layer can be initiated for communication services over IP networks.

Accordingly, among other things, *Korpi* and *Thom* fail to teach, suggest, or motivate initiating a control path connection on a network layer between individual components attached

to the dispersed network and at least one central arbitration server for centralized arbitration of service requests received from the individual components, receiving a service request, initiating a data path connection between the individual components designated by the service request, and the central arbitration server initiating a service layer to supply the requested service, as recited in independent method claim 1.

Furthermore, among other things, *Korpi* and *Thom* fail to teach, suggest, or motivate a communication and data network comprising means for requesting a communication data service; means for initiating a network layer between attached components of the dispersed network, wherein the network layer initiates a control path for the attached components and a data path for select components designated in the requested communication data service, the means for initiating a network layer comprising (i) at least one central arbitration server (CAS) for centralized arbitration of service requests received from the means for requesting a communication data service, and (ii) a plurality of entry gateways (CE), wherein each CE performs digital signal processing on received signals to generate encoded packets and is connected to the at least one CAS via the control path; and means for initiating a service layer to supply the requested communication data service, as recited in independent claim 15.

Applicants respectfully submit, therefore, that the Office Action has failed to establish a *prima facie* case of obviousness with respect to independent method claim 1 and independent claim 15, making the rejection of claims 1 and 15 under 35 U.S.C. § 103(a) as unpatentable over *Korpi* in view of *Thom* improper. Based on at least the foregoing reasons, the rejections of claims 1 and 15 under 35 U.S.C. § 103(a) as unpatentable over *Korpi* in view of *Thom* should be withdrawn.

Rejection of Independent Claim 24 Under 35 U.S.C. § 103(a)

The Office Action rejected independent claim 24 under 35 U.S.C. § 103(a) as being unpatentable over *Korpi* and *Thom* in view of U.S. Patent Application 2001/0046234 A1 by Agrawal et al. ("*Agrawal*").

The conclusion of the Office Action's priority analysis is that only claim 24 is entitled to priority.<sup>3</sup> Office Action, p. 3 (priority analysis). The U.S. Patent Applications relied on for priority were filed on January 16, 1996 (08/585,628) and February 9, 1996 (08/599,238). *Korpi* and *Thom*, however, were not published until July 1999 and December 1996, respectively.<sup>4</sup> Accordingly, neither *Korpi* nor *Thom* qualifies as a prior art reference with respect to independent claim 24. Applicant respectfully submits, therefore, that the rejection of independent claim 24 under 35 U.S.C. § 103(a) as being unpatentable over *Korpi* and *Thom* in view of *Agrawal* is improper and should be withdrawn. Due to the ambiguity noted in footnote 3, Applicant is unable at this time to address the rejections of record with respect to claims 25-27, which depend from claim 24. Once the examiner clarifies which claims are entitled to priority, Applicant will determine an appropriate course of action to pursue for these dependent claims.

Conclusion

Based on at least the foregoing reasons, Applicant respectfully submit that the cited prior art fails to anticipate or make obvious Applicants invention, as claimed for example, in

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<sup>3</sup>On page 2, the Office Action summarizes the priority analysis by indicating that claim 25 is entitled to priority. From the analysis of priority that follows the summary, it appears however, that the reference to claim 25 is a typographical error. Nevertheless, recognizing priority with respect to claim 25 necessarily includes recognizing priority with respect to claim 24, since claim 25 depends from claim 24. Therefore, whether or not priority also extends to claim 25, it is clear that the Office Action gives priority to independent claim 24. Applicants respectfully request clarification of this issue in the next communication from the Examiner.

<sup>4</sup> Applicants also note that the specifications for SIP were not published by the IETF until March, 1999.




independent claims 1, 15, and 24. Applicant notes for the record that the remarks above render the remaining rejections of record for the independent and dependent claims moot, and thus addressing individual rejections or assertions with respect to the teachings of the cited art is unnecessary at the present time, but may be undertaken in the future if necessary or desirable, and Applicants reserve the right to do so.

In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 17<sup>th</sup> day of June, 2004.

Respectfully submitted,



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